

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

: Plaintiff, Case No. 3:10-cr-119
Also Case No. 3:13-cv-137
-vs- : District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

DARYL STOLLINGS,

: Defendant.

REPORT AND RECOMMENDATIONS

This case is before the Court on Defendant's Motion to Vacate pursuant to 28 U.S.C. § 2255 (Doc. No. 93). Represented by the Federal Public Defender, Defendant seeks application to his case of the decision of the United States Supreme Court in *Dorsey v. United States*, 132 S. Ct. 2321 (2012).

Order to answer the Motion, the United States has waived any procedural default resulting from not raising this claim on direct appeal or any issue regarding the timeliness of the Motion and agreed that *Dorsey* warrants the relief requested.

Accordingly, it is respectfully recommended that the Motion to vacate be granted and that Defendant be re-sentenced under the Fair Sentencing Act.

July 1, 2013.

s/ *Michael R. Merz*
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within fourteen days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(d), this period is extended to seventeen days because this Report is being served by one of the methods of service listed in Fed. R. Civ. P. 5(b)(2)(C), (D), (E), or (F). Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within fourteen days after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).